

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
APRIL 21, 2017

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, Gary Reed, and Michael Graham

Commission Members Absent: Alexander Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Betty Farr, Miles Greenleaf, Jaime Wood, Dennis May, and Zachary Matzkin

1. Call the Meeting to Order and Introductions: William Varney, Chair

2. Review and Approval of Minutes

Commissioner Varney asked for a motion on the corrected minutes for April 26, 2016. Commissioner McFarland made a motion to approve the corrected minutes for April 26, 2016. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the minutes for December 15, 2016. Commissioner Graham seconded. Vote 4-0.

Commissioner Graham made a motion to approve the minutes for February 24, 2017. Commissioner McFarland seconded. Vote 3-0. Commissioner Reed was absent.

Review and Approval of Decision and Orders

None.

3. Appeal of Presiding Judge Decision:

a. RE: Scott Niles, Complaint Number 2016 MSHRC 28. Mr. Niles is appealing the October 30, 2016 decision of Presiding Judge Charles Malia in which Judge Malia assessed a \$100.00 fine for the use of offensive, threatening, or profane language or other improper conduct following the Sixth Race at Scarborough Downs. Scott Niles was present and representing himself. AAG, Guay explained that this is a de novo hearing. Prior findings of the judges are set aside. The Commissioners need to make a decision based on what you hear today. He qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, License Application; Exhibit 3, Race Program; Exhibit 4, Appeal Form; Exhibit 5, Steward's List; Exhibit 6, Judges Report; Exhibit 7, Judges Decision and Exhibit 8, Judges List. AAG, Guay admitted the exhibits without objection. He asked Mr. Niles if he had any exhibits. Mr. Niles had no exhibits. AAG, Guay asked if there were any objections to the proceedings. Both parties stated no. AAG, Guay asked Mr. Jennings for an opening statement. Mr. Jennings stated that a horse was scratched. There was exchange of words. Mr. Niles filed a complaint. Did Mr. Niles deserve to have a fine also? AAG, Guay asked if there was a specific rule that was cited. Mr. Jennings stated Chapter 7, Section 53 1.C page 25. Mr. Jennings called Charles Malia. AAG, Guay gave Mr. Malia his oath. Mr. Jennings asked questions of Mr. Malia. Mr. Malia stated that Mr. Niles was upset and abusive because his horse was scratched. Mr. Niles filed a complaint with the Paddock Judge. Mr. Malia discussed this with the judges. There was a judges hearing on November 5, 2016. Mr. Jennings called Phil Lyons. AAG, Guay gave Mr. Lyons his oath. Mr. Jennings asked questions of Mr. Lyons. Mr. Lyons testified saying that Mr. Niles used certain language. AAG, Guay asked Mr. Niles if he used the language stated by Mr. Lyons. Mr. Niles stated yes. Mr. Jennings called Charlene Cushing. AAG, Guay gave Ms. Cushing her oath. Mr. Jennings asked questions of Ms. Cushing. Ms. Cushing testified. AAG, Guay gave Mr. Niles his oath. Mr. Niles stated that if he did not put in a complaint against Mr. Haskell then he would not be here today. He does not understand the fine. Mr. Niles stated that he did not use words against Mr. Haskell. He was referring to himself. AAG, Guay asked the Commissioner if they had any questions for Mr. Niles.

Commissioner Graham asked Mr. Niles what was his purpose was for being in the paddock that day. Mr. Niles stated that he was grooming. Mr. Jennings stated that the departments position is should Mr. Niles receive the fine. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that Mr. Niles instigated the conduct. He also stated that Mr. Haskell's comments were wrong. Commissioner McFarland concurred with Commissioner Graham. Commissioner Varney concurred with both Commissioners. Commissioner Graham made a motion stating that the evidence that was presented it appears that Mr. Niles instigated the incident so therefore they are upholding the judge's decision. Commissioner McFarland seconded. Vote 4-0. AAG, Guay stated that there was sufficient evidence and the appeal is denied.

4. Adoption of Proposed Amendments to CMR 01-017, Chapters 11 and 17

On February 24, 2017, a public hearing was held on proposed amendments to Commission Rules Chapters 9, 11 and 17. The deadline for written comments was March 6, 2017. The Commission then reviewed the comments and instructed the staff relative to which changes to incorporate. The Commission will now consider final adoption of the amended rules, the basis statements, the response to comments, and the statements of impact on small businesses. Mr. Jennings stated to the Commissioners that at the last meeting they were not in favor of the change in Chapter 9 about having the horse's noses on the gate. If that is the sentiment of the Commission, then you do not have to do anything. Mr. Jennings presented Chapter 11 for adoption, this was repealed and replaced. There are four documents that need to be voted on by the Commissioners. There were no comments at the public hearing and no written comments were received. Commissioner Reed made a motion to adopt all four documents for Chapter 11. Commissioner Graham seconded. Vote 4-0. Dr. Matzkin will get the information regarding the time to implement the rule.

Mr. Jennings presented Chapter 17 for adoption. He stated that he did not lower the penalty in section 5 because he wasn't sure if the Commission decided to change that. He stated to the Commissioners that if you should lower the minimum penalties he could go back and put that in. Dr. Matzkin stated that the table on page 10 is not correct on the owner section. Mr. Jennings stated that they are updating the section in Category C. Phenylbutazone 5 to 8 on licensed trainer and Furosemide is crossed out and Ketoprofen goes 2 to 50 as before, and then down to the licensed owner furosemide is crossed out, Phenylbutazone 5 to 8, and Ketoprofen goes 2 to 50. He stated that he would make those changes. Commissioner Graham made a motion to accept all four documents with the changes. Commissioner Reed seconded. Vote 4-0.

5. Public Comment

None.

6. Other Business

Mr. Jennings stated to the Commissioners that at the last meeting they granted the appeal to Mr. Lamarre. The purse was already paid out and you told him to figure out how Mr. Lamarre would be paid. Mr. Jennings had a discussion with the business manager of the Department and he was told to take the money out of the operating account. Ms. Ireland was not at the last meeting and stated that the purse should have not been paid out and why were they paid out. Commissioner Graham stated that this was discussed at the last meeting. The department was in error. Mr. Sweeney stated that there are other considerations that need to be taken under advisement. If you are redistributing purses, that money needs to be accounted for on the race lines for the horses that are affected. They write racing conditions based upon earnings. This needs to be followed through to the USTA and the money needs to be taken back from the persons involved and redistributed. The Commissioners agreed that the money should be taken out of the operating account. Ms. Ireland stated that she disagrees. You are taken the money from the industry. Commissioner Varney asked how she would pay Mr. Lamarre. Ms. Ireland stated that you should ask for the money back. AAG, Guay asked if you could have an off set for a future purse. Commissioner Graham disagrees with that because people in good faith got paid and the judge made a ruling. AAG, Guay stated that they weren't rightfully paid. Commissioner Graham stated that the department made the error so it has to come from somewhere. AAG, Guay stated that if the bank sent you a check that's not due you. You have to send it back. Commissioner Varney asked if they can pay it as an error instead of a race purse out of the operating account. Mr. Jennings stated that this is a precedent. His business manager said that she would be more comfortable if there was something in the minutes. Commissioner Varney stated that they do agree the

purse should have been held so they need to correct it. Mr. Sweeney stated that the industry came together quite a few years ago and decided that they were going to self-fund the Commission. They did that for a number of reasons. The Commission's budget has increased expeditiously in the last couple of years. The rest of the industry is struggling. His track is struggling to keep afloat. The horsemen are struggling with the reduction in purses. There are problems with the industry but taking the money out of the operating expenses is dangerous. He would go back to the horsemen's bookkeeper to make corrections and have invoices sent to the people involved. Then the race lines on the horses would be updated according to the USTA rules. Commissioner Graham stated that the race line argument doesn't hold water with him because every time you don't put the purse back on when someone pays the purse back. Mr. Greenleaf stated that yes they do. Mr. Sweeney stated that he is a formerly clerk of courts so he has been directed to make those changes on certificates and he knows the Commission does that too. Commissioner Graham made a motion to take the money out of the operating account to pay Mr. Lamarre. Commissioner Reed seconded. Vote 3-1. (Commissioner McFarland opposed.) AAG, Guay wanted to be clear to write this up as a decision and order. This is an agency action. You are directing a payment for the amount to come out of the operating account. The finding of fact would be that the Department made an error. Commissioners stated yes. Commissioner McFarland stated that in light of this error made by this body in order that this sort of thing doesn't happen again because he knows that many of the fairs try to pay purses out as reasonably possible. Procedurally, the Department needs to do a better job if and when there is an appeal and it's made note to the state steward. The Associations and/or commercial tracks need to be notified in a timely fashion so that checks aren't distributed and then we end up in this kind of predicament. Mr. Jennings stated that he agrees with Commissioner McFarland. Mr. Jennings stated that we accepted an appeal at the Augusta office and it should have gone to the Bangor Racetrack. We need to do a better job and we will not take appeals in the Augusta office when the incident happened at a racetrack. That's where it needs to happen.

Mr. Jennings stated that they entered into a consent agreement with Steven Robinson for a violation of TC02 requirements on a race that happened on November 6, 2016.

7. Schedule of Future Meetings:

May 19, 2017

June 23, 2017

July 21, 2017

8. Adjourn

11:00 a.m.